IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11774 of 2001
with
SPECIAL CIVIL APPLICATION Nos. 175 and 178 of 2002

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SIDHPUR TALUKA CO-OPERATIVE PURCHASE & SALES UNION
Versus
STATE OF GUAJARAT

Appearance:
1. Special Civil Application No. 11774 of 2001
MR KG VAKHARIA SR. COUNSEL WITH MR TUSHAR MEHTA
for Petitioners
MR AD OZA, GOVERNMENT PLEADER for Respondents No. 1-5
MR KS JHAVERI for Respondents Nos. 6&7 in sca11774/01
MR DR. BHATT for Respondents Nos. 6 to 9 in sca175/02 & for Rs.6 in 178/02

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE D.A.MEHTA

Date of decision:29/01/2002

COMMON C.A.V. JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

#. In these three Petitions pertaining to election to Federal-cum-Specified Cooperative Societies of Siddhpur and Patan Talukas, a common question of law has been raised and therefore they are being decided by this Common Judgment.

#. This would require examination of the scheme of the Gujarat Cooperative Societies Act, 1961 and the Rules framed thereunder (hereinafter referred to as `the Act' and `the Rules') as also the bye-laws of the two Taluka Societies - Siddhpur and Patan, before us.

#. Only few necessary facts are required to be stated at the outset. In the year 1997, the Revenue Department of the State of Gujarat bifurcated certain Districts and Talukas by creating new Districts and new Talukas. Under the aforesaid bifurcation, the State Government created a new District Patan carving out some villages from Mehsana District. The State Government also excluded some of the villages forming part of Siddhpur Revenue Taluka and included them in a newly formed Unjha Taluka. As a result of this bifurcation for creation of new District and Talukas, 27 primary societies affiliated to Siddhpur Taluka Cooperative Society, now fall within the territorial area of newly formed Unjha Taluka.

#. The Election Officer-cum-Prant Officer of Patan Taluka has issued two election programmes for completing process of election separately for Siddhpur and Patan Taluka Cooperative Sale and Purchase Union Limited. The election programme commenced on 21-12-2001 in the case of Siddhpur and on 11-12-2001 and in case of Patan Taluka Cooperative Unions with the preparation of provisional voters list and has partly passed through the stage of finalisation of voters list, filing of nominations, scrutiny of nominations, taking decisions on claims and objections and holding poll. The election is already over with declaration of result on 21-01-2002 for Patan Cooperative Union and it will end on 04-02-2002 for Siddhpur Cooperative Union.

#. The Taluka Sale and Purchase Cooperative Unions at

Siddhpur and Patan are `specified cooperative societies' under Section 74C(1)(iv)(b) of the Act and admittedly the elections to these cooperative societies are required to be held in accordance with the provisions contained in Section 145A to 145Y under Chapter XIA of the Act and Gujarat Specified Cooperative Societies Elections to Committee Rules, 1982 (for short `the Act' and `the Rules of 1982'). Under the provisions contained in Chapter XIA and the Rules of 1982 framed thereunder, all election disputes including those relating to preparation of voters list can be raised under Section 145U of the Act after conclusion of election before the Cooperative Tribunal.

#. The petitioners have also raised grounds challenging the constitutional validity of the provision contained in Section 150 and Rule 78 of the Gujarat Cooperative Societies Rules, 1965 whereunder the Cooperative Tribunal is constituted and the qualifications for appointment of Members to the Tribunal have been prescribed. The main ground of questioning vires of the provisions of the Act and the Rules regarding constitution of Cooperative Tribunal is that it is not constituted as an independent judicial forum in consultation with the High Court. On this ground, it is urged that resort to alternative remedy of Election Petition before the Cooperative Tribunal is not an efficacious remedy and hence this Court should invoke its writ jurisdiction at the stage of preparation of voters list for election to the specified societies.

#. As this Court has allowed the learned counsel appearing for the parties to address the Court on the merits of the case and without relegating them to the remedy of raising an election dispute before the Cooperative Tribunal, it does not consider it necessary to go into the question of constitutional validity of the provisions of the Act and the Rules under which the Cooperative Tribunal is constituted. For the same reason, at the time of hearing of these Petitions, the grounds raised in the Petitions on vires or constitutional validity of the provisions concerning constitution of Cooperative Tribunal and appointment of Members to the same, were not canvassed.

#. The learned counsel appearing for the petitioners, therefore, confined his arguments only to the legality and validity of the action taken by the Election Officer in excluding from the voters list 27 member Cooperative Societies out of total 65 Member Cooperative Societies which are affiliated to the Siddhpur Taluka Specified

Cooperative Society. In the opinion of the District Registrar of Cooperative Societies, Patan, 7 primary cooperative societies, which are affiliated to Siddhpur Federal Specified Cooperative Society being no longer within the territorial area of Patan Taluka and being now falling in Unjha Taluka, cannot be included in the voters list of Siddhpur Taluka which forms now part of new Patan District. This opinion of the District Registrar is contained in his impugned letter dated 22-11-2001 (Annexure A to SCA No. 11774 of 2001) addressed to the Collector, Patan which is the subject of challenge in Special Civil Application No. 11774 of 2001. Special Civil Applications Nos. 175 of 2002 raises similar nature of dispute on exclusion of 5 out of 22 member societies from the voters list of Siddhpur Taluka. Special Civil Applications Nos. 175 of 2002 has been filed against the order of the Election Officer passed on 28-12-2001 deciding objections filed to the voters list whereby the exclusion of 5 primary societies from the voters list of Patan Specified Cooperative Society has been upheld.

#. Special Civil Application No. 178 of 2002 is a separate Petition and shall be dealt with separately.

##. The learned Senior Counsel Shri Vakharia took this Court through the relevant provisions of the Act and 1965 Rules as also 1982 Rules specifically applicable to Specified Cooperative Societies. The principal submission advanced is that delimitation of the areas of Talukas and Districts under Revenue Law, i.e., Bombay Land Revenue Code has no direct relation with election to Federal Cooperative Societies in which elections are required to be held on the basis of membership of primary cooperative societies affiliated to it for the purpose of trade and business. It is submitted that change of area of Revenue Taluka or District does not necessarily result in cessation of membership of the individuals and primary cooperative societies affiliated to a Federal Society under the Act.

##. It is pointed out that whereever the Legislature had an intention to change the structure of Federal Societies at Taluka or District level on the delimitation or change of revenue areas of Districts or Talukas, a special provision is enacted to meet such a situation by providing necessary legislative and administrative steps. Such provision is to be found in Section 18C of the Maharashtra Cooperative Societies Act, 1960. Subsection (1) of Section 18C of the Maharashtra Act relevant for the present purpose reads as under:

"18C. Reorganisation of societies on account of alteration of limits of local areas in which they operate.-(1) Where the area of operation of any society or societies is restricted to any district, taluka, municipal area or any other local area and such area is divided into two or more areas, or merged in any other area, or is diminished or increased or otherwise altered, under any law for the time being in force and the State Government is satisfied that in the public interest, or in the interest of the cooperative movement, or in the interest of the society or societies, or for the purpose of proper demarcation of area of operation for the societies in each area, it is essential to reorganise any such society or societies, the State Government may by an order, published in the Official Gazette, and in such other manner as it deems fit, provide for division or any existing society into two or more societies, amalgamation of two or more existing societies into one society, dissolution of any existing society or reconstitution of any existing society, affected by the territorial changes."

##. The contention advanced by the learned Sr. Counsel on behalf of the Siddhpur and Patan Taluka Federal Societies is that in the absence of an analogous provision like Maharashtra Act in the Gujarat Act, merely on change of revenue areas of Patan and Siddhpur Talukas, the membership of the Federal Societies in those Talukas would not change, unless the Societies themselves amend their bye-laws under Section 13 of the Act and in accordance with the procedure laid down therein or Registrar of Cooperative Societies exercises his powers under Section 14 compelling the Societies to amend their bye-laws. The submission made is that in the absence of amendment of the bye-laws, the membership of primary societies to Federal Society cannot automatically cease contrary to the provisions contained in Section 26 of the Act, which govern the cessation of membership of Cooperative Society only in circumstances, ground and in the manner provided therein. It is pointed out that the opinion of the District Registrar, Patan, which is impugned in the Petition is not in accordance with the provisions of the Act and the Rules and a contrary opinion has been expressed by his superior, i.e. the Joint Registrar which is on record at Annexure D to SCA No. 175 of 2002. On the above contentions on behalf of the petitioners representing Siddhpur and Patan Taluka

Federal Societies with primary societies affiliated to it as co-petitioners, it is submitted that this is the right time for this Court to intervene in the election process before the date of polling and formal declaration of the results of the elections of Siddhpur Cooperative Union. Directions are sought against Election Authorities to suitably revise the voters list and include in it 7 primary cooperative societies named in the Petition which are now located in the Revenue Taluka of Unjha, District Mehsana.

##. We have heard Shri Arun D. Oza, learned Government Pleader appearing for the State of Gujarat and the Election Authorities and Shri K.S. Zaveri for respondents nos. 6 to 8, who have supported the procedure of election adopted by the Election Authorities by excluding names of such affiliated cooperative societies which fall outside the concerned revenue Talukas of Siddhpur and which fall in Taluka Unjha.

##. A brief survey of the provisions of the Act and the Rules is necessary to examine the scheme and structure of the cooperative societies envisaged in law. Subsection (9) of Section 2 defines `Federal Society' to mean society which has not less than 5 societies as its members. Section 9 provides registration of cooperative societies on the basis of its bye-laws framed and which are not found contrary to the provisions of the Act and the Rules. Section 12 allows the Registrar to classify the societies under such heads as it may determine on the basis of its area of operation and nature of its trade and activities. Section 13 of the Act permits a registered society to amend its bye-laws, by passing a resolution for the purpose in a general meeting of the society. Section 14 of the Act empowers the Registrar of Cooperative Societies to propose amendment to bye-laws if such amendment is found necessary or desirable in the interest of the society and if such proposal is not accepted to effect an amendment in the bye-laws within a specified period, to compel the society. Under Section 22, membership of the cooperative society can be given to an individual, a firm or a company, another registered society, State Government, Local Authority and public trust. Section 23 provides removal of membership in certain circumstances such as false declaration by a member for becoming a member of the society or incurring of disqualification by the member under Section 22(3) of the Act. Subsection (8) of Section 28 regulates the voting rights of the member societies and individuals. A member society can also appoint a delegate to vote on its behalf to a federal society. Section 26 provides that

membership to a society may cease on the member resigning or on the transfer of whole of its share or interest in the society to another member or on his death or removal. Section 74C provides for hierarchy of societies on the basis of its State level, District level or Taluka level operations. The elections of such categorised societies in Section 74C of the Act are required to be conducted in accordance with Chapter XIA of the Act. Under Chapter XIA, the elections to specified societies are to be held by the Collector or any other Officer appointed by the Collector. Section 145F provides for disqualification of membership. Section 145U provides for decision of election disputes by Cooperative Tribunal. A few provisions of Rules of 1982 applicable to specified societies are also required to be noted. Rule 2 containing the definition clauses in clause (b) defines constituency to mean "an electoral division, if any, as specified in the bye-laws of the specified society". Rule 4 provides for preparation of a provisional voters list constituency-wise as provided in the bye-laws of the society. The provisional list is prepared on the basis of list of the members provided by the society concerned. Rule 6 permits raising of claims and objections for inclusion and exclusion of names of members in the voters list and their decision by the Election Officer. After finalising the voters list under Rule 7, the election programme is required to be fixed under Rule 16. Under rule 18 only a member can be nominated as a candidate at the election if he is qualified to fill the seat under the provisions of the Act, Rules and bye-laws and his name is entered in the voters list. At the stage of scrutiny nomination of candidate not qualified in accordance with bye-laws is liable to be rejected.

##. Having thus briefly surveyed the scheme of the Act on the provisions of the Act and the Rules mentioned above, what we discover is that the structure of the cooperative societies from State level down to Taluka level is based on the revenue areas. A District and Taluka cooperative society is required to have its membership within the District and Taluka. Elections to societies, federal or otherwise, are required to be conducted by the District Collector on the basis of the revenue areas of Taluka or District concerned. It is, therefore, not possible to accept the contention advanced on behalf of the petitioners that revenue area of Taluka or District has no relationship with the holding of elections to cooperative society of District or Taluka level. It is true that in the Gujarat Act, there are no parallel provisions as to be found in Section 18C of the Maharashtra Act to take care of the change in structure

of cooperative societies in the event of change of area of Taluka or District. But for that reason alone, it cannot be held that under the Gujarat Act and the Rules framed thereunder, regardless of the change of the area of Taluka or District and without amending its bye-laws, a cooperative society of primary level can send its members for vote or election to a federal society at Taluka level when such societies do not fall within the revenue area of that Taluka. In the absence of a provision analogous to Section 18C of the Maharashtra Act, to enable its members to exercise right of vote and contest from primary societies to federal society, it is incumbent on the society to amend its bye-laws to restrict its election to the area of Taluka or District in accordance with Section 13 of the Act. The Registrar can also invoke its authority for effecting corresponding change in the bye-laws under Section 14 of the Act to restrict election to members within the Taluka and District. There is great force in the submission made on behalf of the respondents that the right of a member to vote or contest as member of a primary society for election to federal society is to be regulated by the concerned bye-laws of the federal society and if the bye-laws restrict the membership to affiliated societies which fall within the Taluka, societies which fall outside the Taluka cannot claim right of vote and contest through their members or delegates. In this respect bye-law no. 7(1) of Siddhpur Taluka Federal Cooperative Society and Patan Taluka Federal Cooperative Society are required to be seen, the copies of which were passed on to us in the course of hearing. Bye-law No. 7(1) in both the Taluka level federal societies at Patan and Siddhpur prescribe eligibility qualification for a member to be an individual or society existing and operating within the Taluka concerned. If that is the position of the bye-law, any member society or individual, who is not within the Taluka, merely by continuance of its membership on the register with primary society can claim no right to participate in election to the federal societies.

##. Learned counsel appearing for the petitioner made a strenuous effort to persuade us to hold that the word "Siddhpur Taluka" as used in the bye-laws should mean "Siddhpur Taluka" as it existed prior to the year 1997 i.e. before the areas of Talukas were changed and some part of the villages with primary societies therein were excluded and joined with Unjha Taluka. According to learned counsel for the petitioner, such meaning would be purposeful to effectuate the provisions of the Act and any other interpretation of the bye-laws by extending its

application to the changed revenue area of "Siddhpur Taluka" would deprive members of affiliated societies falling outside the new Siddhpur Taluka from participating in the election It is argued that such interpretation as is sought to be placed on the bye-law by the respondents would amount to automatic cessation of membership of such primary societies which now do not fall within the new revenue area of Siddhpur Taluka.

##. After examining the scheme of the Act and the relevant bye-laws, the contention advanced on behalf of the petitioners, although attractive, is not acceptable. As we have stated above, the qualification, constitution and structure of the societies from State level down to Taluka level are based on the territorial revenue areas of District and Taluka. The Collector who is the Revenue Head of the District is empowered to hold the elections and his jurisdiction is limited to the District. Similarly, the Officers and Authorities on whom powers are conferred by the Collector for conducting elections have also territorial jurisdiction restricted to Talukas in which they are exercising the powers on behalf of the Collector. It is rightly pointed out on behalf of the respondents that if 27 primary cooperative societies, which no longer form part of Siddhpur Taluka and may seek affiliation to Unjha Taluka Federal Society, are allowed to vote and contest for election to Siddhpur Taluka, an imbalance would be created, adversely affecting the Federal Societies now falling in Unjha Taluka.

##. Keeping in view the envisaged structure of the Federal Societies in the Act, elections to them are required to be held only on the basis of existing revenue areas. It is also argued on behalf of the petitioners that merely by change of territorial area of Talukas, membership of primary societies or federal society would not automatically cease under any provision of the Act. It is also submitted that the area of operation and business activities of a federal society has no direct connection with the revenue areas of a Taluka or District. In this respect, it is further contended that rights of individuals and societies as members of primary and federal societies cannot be adversely affected contrary to their rights provided in the bye-laws only because of change of territorial area of the Talukas under the Bombay Land Revenue Code.

##. On the last argument, we may clarify that a member validly admitted to a primary or federal society has several rights qua member. By virtue of membership or as a share holder, he has a right to get advantage of his

membership in the trade and business of the society. He has also other rights as member to have business transactions with the society. But in our considered opinion, his rights in society qua member to vote and contest are dependent upon his being a member (individual or society) residing or having its operations within a particular territorial jurisdiction of Revenue Taluka. If a society as a member or an individual as member ceases to belong to a Revenue Taluka, they cannot claim right to vote or contest as member of that society, in election of Federal Society of that Taluka. The bye-law No. 7(1) of Taluka Federal Society have to be applied on the situation obtaining on the date of election. The contention advanced on behalf of the petitioners cannot be accepted that the word "Siddhpur Taluka" mentioned therein should be read to mean "Siddhpur Taluka" as it existed on the date of framing of bye-law No. 7(1) and prior to delimitation of Taluka in the year 1997. In our opinion, such a construction and interpretation of the provisions of the Act and the bye-laws would be destructive of the structure of cooperative societies based on revenue areas from apex down to district and taluka levels. Such interpretation will also adversely affect the elections to the federal society of other Talukas like Unjha within whose territorial area now the 27 cooperative societies fall. In the absence of an analogous provision as to be found in Maharashtra Act, on delimitation or change of area of Revenue Talukas, it is incumbent on the concerned societies to amend their bye-laws or for the Registrar to take suitable corrective or coercive action under Section 14.

##. We are also not at all impressed by the argument that different Authorities at different hierarchical level of the State of Gujarat in Co-operative Department hold different opinions on the question of inclusion or exclusion of the members of a society for elections on change of revenue areas, and in some other societies, the statutory change of revenue areas of Talukas and Districts were disregarded. Since we have examined the provisions of the Act, and, after examining the scheme, have reached the conclusion aforesaid, any contrary opinions of administrative authorities or administrative practice will have no efficacy.

##. As a result of the detail discussion aforesaid, Special Civil Application No. 11774 of 2001 and Special Civil Application No. 175 of 2002 deserve to be dismissed.

##. So far as Special Civil Application No. 178 of 2002

is concerned, it appears to be a distinct matter, although it is heard along with other two matters, because the question of vires of Section 150 of the Act and the Rule 78 on the question of validity of the constitution of a Cooperative Tribunal was common ground in all the Petitions. Special Civil Application No. 178 of 2002 concerns election to federal society of Patan Taluka. In accordance with the election programme annexed as Annexure B to the Petition, the election to the federal society of Patan is already over on 21-01-2002. This Petition is directed against the order of the Election Officer dated 28-12-2001 whereby the delegate sent by the petitioner No.2 - Ablauva Seva Sahkari Mandali Limited for election to Patan Taluka Cooperative Purchase and Sale Union - petitioner No.1, was rejected on the ground that the delegate was employee of another cooperative society and hence disqualified to act as delegate on behalf of the primary society mentioned above. Since the elections are already over and it is not possible to find out whether non-inclusion of the name of the delegate of the primary society had such material effect on the total election of the federal society as to invalidate it, it is not possible for us to go into the grievance raised in the Petition. The petitioner has now to work out his rights in accordance with the provisions of the Act and the Rules. As we have already mentioned above, the question of vires of Section 150 and Rule 78 of the Act and the Rules was not urged and is not being decided by us.

As a result of the aforesaid discussion, all the three Petitions fail and are hereby dismissed, but in the circumstances without any order as to costs. Notice is discharged.

(D.M. DHARMADHIKARI, C.J.)

(D.A. MEHTA, J.)

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